



## SCOTT FITZPATRICK MISSOURI STATE AUDITOR

### Investigative Summary - Chesterfield Mall TIF

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#### **Summary of Significant Complaint(s) reported:**

The State Auditor's Office (SAO) received multiple complaints related to the propriety of the Chesterfield Regional Tax Increment Financing (TIF) District, which includes the Chesterfield Mall site as well as the Wildhorse Village development. General concerns included the legitimacy of the blight determination, as well as questions of whether the district met the 'but-for' requirements in state law that specify a project can only use TIF if the project would not be completed without such assistance.

#### **Background:**

On November 21, 2022, the Chesterfield TIF Commission voted to recommend approval of the Chesterfield Regional TIF District. Subsequently, on December 5, 2022, the City of Chesterfield formally approved the creation of the district and approved approximately \$300 million in TIF for the redevelopment. The approved redevelopment plan detailed \$3.3 billion in development costs for the redevelopment area that includes the Chesterfield Mall, Wildhorse Village, Central Park, and several roadway intersections in the vicinity. On December 20, 2022, Dillards, Inc. filed a motion for declaratory judgment in St. Louis County, and subsequently on December 1, 2023, Dillards, Inc. filed a second amended petition for declaratory judgment to "challenge Chesterfield's attempt to use the TIF Act to unlawfully subsidize private development projects with public tax dollars and to divert property tax revenues away from other taxing authorities. . ." In June 2024, Dillards, Inc. and the City of Chesterfield reached a settlement in this lawsuit. The redevelopment is currently underway.

#### **Complaint Review:**

Our investigation included a review of various City of Chesterfield documents related to the TIF, including TIF Commission minutes, city planning meeting minutes, the redevelopment plan of the district, as well as the Dillards, Inc. petitions, interviews with relevant city personnel, and whistleblower complainants. Our investigation also included gaining an understanding of the relevant state statutes related to TIF.

**Complaints that a significant portion of the redevelopment area was not considered blighted and was under development prior to the approval of the TIF district were confirmed.** No evidence of blight for Wildhorse Village was provided in the redevelopment plan, and construction and development of Wildhorse Village began in 2021 and continued through 2022, well before the TIF was approved. Similarly, the city had previously developed the Central Park portion of the redevelopment area, and the redevelopment plan made no claim that portion of the redevelopment area was blighted or would not otherwise be developed.

**However, state law related to TIF allows for such circumstances.** Section 99.810, RSMo states; "No redevelopment plan shall be adopted by a municipality without findings that: (1) The redevelopment area on the whole is a blighted area, a conservation area, or an economic development area, and has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing.<sup>1</sup>" The redevelopment plan

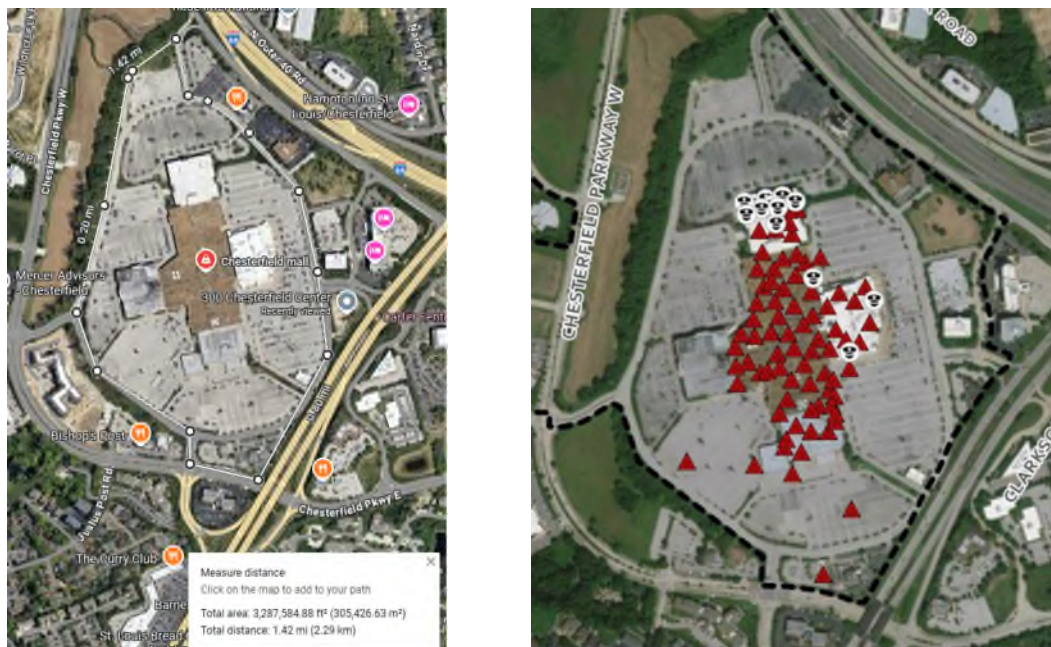
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<sup>1</sup> The second half of this section is more commonly referred to the 'but-for' test.

makes no reference to any part of the redevelopment area as being designated a conservation area or an economic development area, therefore these two designations will not be discussed.

The phrase "on the whole" in the above section allows for a portion of the redevelopment area to not be blighted, and similarly, the 'but-for' test does not have to be met for the entire redevelopment area. Rather, the redevelopment area must be predominantly blighted, and a predominance of the redevelopment area must pass the 'but-for' test. The redevelopment plan makes clear the mall portion of the redevelopment area is considered blighted, and states specifically that based on the map in Appendix D of the redevelopment plan "...the majority of the Redevelopment Area is affected by one or more blighting factors...", and therefore, the entire redevelopment area meets the legal definition of a "blighted area". The state law definition and criteria of "blight" is very subjective. As such, **the SAO does not question the blight designation factors documented in the redevelopment plan.**

Acreage tables included in the redevelopment plan were not clear in demonstrating that a majority of the redevelopment area is affected by blighting factors, since acreage of the various redevelopment project areas (RPA) was not presented. To make a determination regarding the portion of the redevelopment area demonstrating blight factors, we used the Google Maps measurement tool to measure the area of the mall site, while using the blight map from Appendix D of the redevelopment plan as reference. See maps below.



Source: (L) Google Maps, (R) Appendix D of the development plan.

The area containing all of the documented and designated blight factors encompasses approximately 3.3 million square feet, or 76 acres<sup>2</sup>, according to Google Maps. According to the redevelopment plan the entirety of the redevelopment area is 216.39 acres, making the portion of the redevelopment plan affected by blighting factors approximately 35 percent (76/216.39). However, the Missouri Supreme Court has concluded that "a blighted area may include parcels which are not themselves blighted if these parcels are necessary to provide a tract of sufficient size or accessibility to attract redevelopers." The redevelopment plan is not clear on what areas, and corresponding acres, are designated blighted and on what basis those areas are considered blighted.

<sup>2</sup> 3,300,000 square feet, divided by 43,560 square feet (1 acre) = 75.76 acres

**A discrepancy was noted in our review of the redevelopment plan.** The acreage documented in one of the tables in the plan and the total acreage presented in the legal description do not agree. Since this discrepancy had the potential to impact whether the redevelopment area met the "on the whole" criteria from Section 99.810, RSMo, we asked the city to provide clarification. The city identified that the legal description acreage incorrectly included both the amphitheater as well as the library as being within RPA3. In addition, one of the maps from the redevelopment plan incorrectly depicted the boundaries of RPA3 to include these areas as well.

**The 'but-for' determination is questionable, however, state law provides no clear criteria to evaluate compliance.** The redevelopment plan includes three signed and notarized statements from the city, the developer of Wildhorse Village, and the developer of the Chesterfield Mall site, that the redevelopment area, as a whole, is blighted, has not been subject to growth and development through investment by private enterprise, and would not *reasonably be anticipated to be developed without the adoption of tax increment financing* (emphasis added). Evaluation of whether a redevelopment area could reasonably be anticipated to be developed without TIF assistance is difficult since there are no clear criteria in state law to use as a basis for this conclusion in the event development has not yet commenced. In the case of the Wildhorse Village and Central Park portions of the redevelopment plan, the developer and the city, respectively, had already made improvements without TIF being adopted. However, in the case of the Chesterfield Mall area, there had been no significant development of the area as of the time of the approval of TIF. It is also true the Chesterfield Mall developer had made no formal or informal (that we are aware of) request for TIF assistance, and the amount of TIF assistance is a relatively small portion of the overall project costs (less than 10 percent). Based on these two factors, the project's viability does not appear to be significantly reliant on the adoption of TIF. Based on our review of city planning documents, the city appears to have been the primary party advocating for the use of TIF in this case.

However, according to case law, the entire redevelopment area must be considered in determining whether it would be developed without the TIF, instead of examining piecemeal or sporadic redevelopment on only portions of the redevelopment area, and whether this redevelopment area meets the statutory definition of the development being "reasonably anticipated to be developed without the adoption of tax increment financing" is fairly debatable.

### **Conclusion:**

In our review of the complaint, we found no indication of fraud or corruption. However, we noted issues with several aspects of the adoption of TIF for the redevelopment in question. The redevelopment plan, as currently written, does not clearly support the conclusion the redevelopment area, on the whole, is impacted by blight factors. However, state TIF laws also do not contain specific or clear criteria to draw a definitive conclusion. While possible under current TIF laws, it is unusual to see large areas of a redevelopment area not meet the definition of either blight, a conservation area, or an economic development area. Similarly, the redevelopment plan does not clearly identify which portions of the redevelopment area were under development when the TIF district was approved, and would therefore, not pass the 'but-for' test. While it is unusual, it is not out of compliance with the TIF law for a significant portion of the redevelopment area to be under development when the TIF district is approved. To improve transparency to the public, the city should consider clarifying the redevelopment plan regarding what portions of the redevelopment area are designated as blighted areas, and whether any of the acres are designated as conservation areas or economic development areas, as well as clarify which portions of the redevelopment plan were being developed prior to the TIF district being passed. In addition, to address the discrepancy in the legal description of RPA3, the city should amend the redevelopment plan to correct the legal description and depiction of the redevelopment area.

The impact of the use of TIF for this project will be borne by political subdivisions funded with property tax revenue, such as the Parkway School District, which is funded significantly with property tax revenues. Any incremental property tax revenue from the redevelopment area properties will be redirected to the TIF district and used to reimburse the city approximately \$168 million in project costs, approximately \$130 million to the developers, and up to \$54 million to the affected school districts for any necessary capital expenses, until all TIF debts are paid, or 23 years, whichever is sooner. Given the scale and complexity of the project, transparency would also be improved by the city reporting on the status of the TIF district more frequently than the required annual report (available on the State Auditor's Office website) and ensuring updated project status information is readily available to taxpayers.

Ultimately, while we recommend the City of Chesterfield take action to correct several issues in the redevelopment plan and take action to improve transparency, our investigation found no issues that would prevent the TIF from proceeding.